



Vossloh Fastening Systems America Corporation General Terms & Conditions

Status: 01/2022

1. General

1.1 These General Terms and Conditions shall apply to all tenders of our company (hereinafter: "Seller" or "Vossloh") for the sale of fasteners and/or fastening systems (hereinafter: "Goods") or the provision of services by Vossloh to the customer (hereinafter: "Customer"). These General Terms and Conditions form a component of all contracts that Vossloh signs with its contractual partners. The transaction is hereinafter referred to as the "Agreement" or "Contract".

1.2 This Agreement does not constitute an acceptance by Seller of any offer or counteroffer of Buyer, and Seller hereby rejects any additional, different, or inconsistent terms, conditions or limitations contained in or incorporated by reference in any forms, purchase orders or other documents of Customer that already have been or hereafter may be presented to Seller with respect to this Agreement. If Customer has submitted or will submit additional and/or different terms and conditions to Seller, or submit a counteroffer to Seller, Seller's subsequent performance will not be construed as either acceptance of Customer's additional and/or different terms and conditions or Customer's counteroffer, nor will Seller's subsequent performance be viewed as a willingness to accept any provision of the Uniform Commercial Code, as adopted by any state or commonwealth, that is contrary or in addition to any of the terms and conditions hereof. To the fullest extent permitted by law, and to the extent Customer may have a claim against Seller and/or any of Seller's parent, subsidiaries or affiliates, solely these Terms and Conditions shall apply.

2. Prices

All prices are payable in U.S. currency unless otherwise stated. The price does not include applicable local, state and federal excise, sales and use taxes, cartage, transportation and other incidental expenses, levies, and imposts and Customer shall bear all such costs and expenses. The price to be paid shall not be subject to any discount or reduction, except as agreed in writing by an authorized officer of Seller.

3. Payment

3.1 Unless otherwise specified in writing by Seller, complete payment for Goods and Services is due within 30 days from the date of Seller's invoice. If timely payment is not made, Seller, in addition to its other legal rights, shall be entitled to charge interest on all overdue payments at the rate of 2% per annum over the prime rate of JPMorgan Chase Bank of Chicago, Illinois as in effect from time to time, but in no event less than 12% per annum. The interest charge, however, shall not exceed any applicable ceiling on interest which may be legally charged. In the event said interest rate does exceed the maximum rate chargeable by law, then the rate shall be deemed to be the maximum rate legally chargeable.

3.2 Seller shall invoice the Customer for Goods as they are manufactured and upon Seller's confirmation that the Goods meet agreed to specifications. The Goods shall be deemed to meet specifications as of the date of Seller's invoice unless Customer notifies Seller of its rejection of any of the Goods in writing (and the reason for rejection) within thirty (30) days of the Seller's reporting of the results of its post-manufacture testing for conformity with the specifications. Seller shall provide the Customer with reasonable access to Seller's facility and the Goods during normal business hours to enable the Customer to perform inspections as provided in the specifications, to observe the manufacture of the Goods and Seller's post-manufacture testing of the Goods for conformity with the specifications and to observe the handling and storage of the completed Goods.

(a) Seller will have the right to offset any and all amounts due and

owing from Seller to Customer under this Agreement, including, without limitation, any chargebacks or rebates, against any amounts due and owing from Customer to Seller under this Agreement or otherwise.

(b) If Customer defaults in payment, Customer will be liable for all collection costs incurred by Seller including, without limitation, attorneys' and collection agency fees, and all related disbursements.

(c) If Customer does not make payment for Goods or Services when payment is due, past due amounts are subject to service charges of one and a half percent (1 ½%) per month or the maximum percentage rate permitted by law, whichever is less.

(d) No tax imposed in respect to the sale of the Goods or Services sold hereunder is included. Any such tax shall be added and paid by Buyer.

4. Warranty

The Goods meet or exceed Seller's specifications for the Goods. This warranty is valid for one year following the date of delivery. Reasonable variations under and over the quantity ordered shall be taken or allowed. Except as expressly set forth above, Seller makes no express or implied warranty that the Goods sold hereunder are non-infringing, are of merchantable quality, or that the Goods shall be fit for any particular purpose. No other warranties are granted, expressed or implied, by operation of law or otherwise. The sole and exclusive remedy for any non-conforming or defective Goods shall be, at Seller's option, the repair or replacement of the defective portion of the Goods.

5. Liability

Inasmuch as the value of the Goods sold hereunder may be substantially disproportionate to the value of products to be used in conjunction therewith, and, for the express purpose of limiting the liability of Seller and the remedies available to Customer to an extent which is reasonably proportionate to the commercial value of this Agreement, Customer and Seller agree:

(a) In keeping with the course of performance and dealing, usage of the trade, and the accepted practice of Seller, Seller's liability to Customer or to any party claiming through or on behalf of Buyer, with respect to any claim or loss arising out of this transaction or alleged to have resulted from an act or omission of Seller's negligence or otherwise, including failure to deliver, delay in delivery, or breach of warranty, shall be limited to an amount equal to the purchase price of the Goods paid by Customer to Seller less the fair market value of the Goods in Customer's possession with respect to which such liability is claimed or, where appropriate and at the option of Seller, to replacement of the Goods or replacement and pickup of the Goods. In no event shall Seller be liable for consequential or incidental damages, losses, or expenses arising out of this Agreement. No action, regardless of form, arising out of the transactions under this Contract may be brought by Customer more than one year after the cause of action has accrued.

(b) Where the Goods of Seller are connected and/or assembled with construction material and/or components provided by Customer or by third parties, Seller is only responsible and liable to the extent set out above, for the Goods provided by Seller. Any and all liability of Seller due to or in connection with defects and/or damages caused by improper installation of Seller's Goods and/or assembly with inaccurate, defective or for any other reason inappropriate construction material and/or components is explicitly excluded.

6. Further Provisions

6.1 Delivery, Shipment, Loss or Damage during Shipment

6.1.1 Seller will use commercially reasonable efforts to deliver all Goods at the date and within the time specified in the Contract. Unless

otherwise specified, Seller shall have the right to make partial deliveries. Each partial delivery or installment of the Goods shall be deemed to be sold under a separate contract containing all of the terms and conditions set forth herein and payment shall be due in accordance with the terms of payment herein.

6.1.2 Where the Goods are packed or protected as specified in accordance with the Contract (or, in the event of no such specifications, the Goods are delivered without any or sufficient packing or protection), Seller shall not be liable for any deterioration or damage of the Goods. Customer assumes all risks and liability, and Seller assumes no risk and no liability, with respect to unloading and discharge of the Goods (including failure of discharge or unloading implements or material used by Buyer, whether or not supplied by Seller), storage, handling, sales or use of the Goods, and the compliance or noncompliance with all federal and local laws and regulations.

6.1.3 No claims respecting loss or damage to the Goods in transit shall be recognized unless notice is given by Customer to Seller as follows:
(a) in the case of non-delivery of all of the Goods, if Customer gives written notice thereof to Seller at Seller's address within seven (7) days after the date of Seller's notification of dispatch of the Goods; and
(b) in case of partial loss and/or damage to the Goods if Customer gives immediate notice thereof (if oral then to be subsequently confirmed in writing) to Seller at Seller's address at the time when the partial loss and/or damage to the Goods is discovered. Such notice must be given in any event not later than seven (7) days after tender of delivery of the Goods.

6.2 Seller's Indemnification

Customer will indemnify, defend and hold harmless Seller, its shareholders, officers, directors, employees, agents, representatives, and third-party subcontractors from and against any and all losses, damages, liabilities, costs, and expenses including, without limitation, property damage, loss of profits or revenue, loss of use of any property, cost of capital, cost of purchased or replacement power or temporary equipment, personal or bodily injury, death or third party liability for claims ("Losses"), that may arise pursuant to or in connection with this Agreement, the Goods, or the Services (including, without limitation, Losses arising in connection with the performance of Services on Customer's premises by Seller's employees, representatives, agents, or subcontractors), regardless of whether such Losses are suffered directly by Customer or arise pursuant to or in connection with a third-party suit, claim, counterclaim, demand, judgment or other action (each a "Claim") and regardless of whether or not Seller or any third-party is proportionately negligent with respect to such Losses and/or Claim. For the avoidance of doubt and without limitation of the foregoing, this indemnification obligation requires Customer to pay any judgments against Seller or any other indemnified party resulting from any Claim, any court costs of Seller or any other indemnified party in connection with any Claim, and any reasonable attorneys' fees and disbursements incurred by Seller or any other indemnified party in Seller's defense of any Claim. Seller will have the sole and exclusive right to conduct the defense of any Claim at Customer's sole and exclusive cost and expense. Customer's indemnification obligation does not depend on the truth or accuracy of any allegations made against Seller, Customer or any third party.

6.3 Inspection

6.3.1 Customer shall inspect the Goods as provided herein or, in the event no provision is made for inspection, then at the place of delivery to Buyer. If Customer alleges that the Goods or any part thereof are not in accordance with the contract, except in

circumstances where subparagraph 6.3.2 applies, Customer shall give written notice stating all defects on which Customer proposes to rely to Seller within seven (7) days after the date of inspection as stated herein or after arrival of the Goods at the place of delivery, whichever event first occurs, and afford facilities to Seller or its agent to inspect the Goods before the Goods are used, processed, sold or otherwise dealt with. If the Goods or any part thereof are proven not to be in accordance with the Contract or specifications, then Seller will accept Customer's rejection of such Goods and Customer shall set aside such defective Goods for Seller and Seller may, at its sole option, (i) cure the non-conformity at a location to be designated by Seller or, (ii) pick-up and replace such Goods within a reasonable time at the place of delivery as stated in this Contract or, (iii) allow Customer to retain such defective Goods and credit Customer with the invoice price thereof less their fair market value, or (iv) pick-up such Goods and credit Customer with the invoice price thereof.

6.3.2 If Seller agrees to allow Customer or its agent or representative to inspect the Goods at the producing facility before delivery, that inspection shall be final and on its completion and Customer shall be deemed to have accepted all Goods made available for inspection unless Customer or its agent or representative shall serve written notice to Seller within five (5) days of the completion of its inspection that the Goods or any part thereof are not in accordance with the Contract or specifications. Seller shall then have right to inspect said defective Goods and, if proved to be defective, Seller, within a reasonable period of time, shall have the right to cure the non-conformity or to replace the Goods at the place of delivery stated in this Contract or, at Seller's option, allow Customer a credit for the invoice price hereof.

6.3.3 Any and all inspections by Customer shall be at Customer's sole cost and expense.

6.3.4 Customer shall not return any of the Goods to Seller, nor shall Customer withhold payment or deduct the cost of the alleged defective Goods or any part thereof, without Seller's express written consent.

6.3.5 The remedies afforded to Customer in this Section are in lieu of any other legal or equitable remedies including those set forth in Section 5.

6.3.6 Customer's failure to inspect and/or notify Seller as provided above shall be deemed to be a waiver of any and all rights and remedies that Customer may have with regard to any defect or nonconformity regarding the Goods except for any latent defect which would not have been discoverable upon reasonable inspection.

6.4 Seller's Remedies

6.4.1 In the event that Customer fails to perform any of its obligations, Seller shall be entitled to all legal and equitable remedies including those specified herein and under the Uniform Commercial Code.

6.4.2 Seller shall have the right to withhold shipment of any portion of the Goods covered by the Contract in the event Customer fails to make payment when due for prior shipments under the contract. Such action on the part of Seller shall not release Customer from its obligation to accept and pay for such remaining portion of the Goods if and when shipped by Seller.

6.4.3 Notwithstanding any specified payment terms, Seller may require payment in advance before making any shipment if Customer's credit shall, at any time, in the sole judgment of Seller, become impaired. The total Contract price shall become immediately due and payable and Seller may cancel the unperformed portion of the Contract upon Customer's failure to make payment when due.

6.4.4 In the event Seller should elect to pursue its remedies under Section 2-708 of the Uniform Commercial Code, damages shall be, at Seller's option, either equal to the difference between the market price at the time and place for tender and the unpaid Contract price or equal to the profit that Seller would have realized under this contract. In addition, Seller may recover incidental damages which shall include but not be limited to cancellation fees or penalties imposed by its suppliers or manufacturers. Seller shall be entitled to recover all of its costs, fees (including reasonable attorneys' fees and witness' fees) and expenses in pursuing any and all of its remedies against Buyer.

6.5 Patent Infringement

Customer assumes all risk of patent infringement by reason of any use Customer makes of the Goods to be manufactured and/or supplied by Seller in combination with other material or in the operation of any process.

6.6 OFAC Lists

None of Customer or any of its officers, directors or employees is on any list of prohibited countries, individuals, organizations or entities that is administered or maintained by the U.S. Office of Foreign Assets Control ("OFAC").

7. Force Majeure

7.1 Seller shall not be liable for any delay in manufacture or delivery due to fires, strikes, disputes with workmen, war, civil commotion, epidemics, floods, accidents, delays in transportation, shortage of vehicles, shortage of fuel or other material, shortage of labor, acts of God, acts of terrorism, demands or requirements of the Government of the United States, or of any other State or Government, or to any other causes beyond the control of Seller, or of Seller's supplier, notwithstanding that such causes of delay are in existence at the time of making the contract, and the existence of such causes of delay shall justify the suspension of manufacture and shall extend the time of performance on the part of Seller to such extent as may be necessary to enable it to make delivery in the exercise of reasonable diligence after the causes of delay have been removed. If the manufacture or delivery of the Goods is still prevented or hindered at the end of a reasonable period, Seller may terminate any deliveries not made by giving notice to Buyer, and Seller shall have no further liability whatsoever in connection with such deliveries.

8. Termination

Seller may terminate this Contract at any time:

(a) Without notice to Buyer, in the event Customer shall breach any of the terms and conditions of this contract.

(b) Without notice to Buyer, if Customer makes any assignment of assets, or if a trustee or receiver is appointed to administer or conduct Customer's business or affairs, or if a petition is filed regarding Customer for the approval of a plan of reorganization or voluntary or involuntary bankruptcy, or if Customer is unable to pay its debts as they become due - such termination shall be without prejudice to any right vested in Seller at the date of such termination, and Seller's existing rights and obligations under the provisions of this Contract shall not be affected by such termination.

(c) At its convenience, either in whole or in part, by written or facsimile notice at any time. If this Contract is terminated for convenience, any claim of Customer shall be settled on the basis of reasonable costs it has incurred in the performance of this contract.

9. Title

Unless otherwise agreed, all sales are Ex Works Seller's facility.

Seller shall retain a first priority security interest in and a lien on such Goods until payment by Customer of all amounts due Seller from Customer with respect to such Goods.

10. Passing of Risk

Notwithstanding the foregoing, title and risk of loss to the Goods transfers to Customer upon the Goods passing Seller's post-manufacture testing for compliance with agreed upon specifications. Any shipping dates for Goods or performance dates for Services given in advance of actual shipment of Goods or performance of Services are Seller's best estimates for informational purposes only, and deliveries of Goods and performance of Services will be made subject to prior orders on file with Seller. Unless otherwise agreed to by Seller in writing, Customer will pay any insurance costs in connection with storage and delivery of the Goods and will be responsible for filing and pursuing claims with carriers for loss of or damage to Goods while in storage or in transit. Any claims for shortages or discrepancies will be waived by Customer unless made in writing to Seller within five days of receipt of the Goods.

11. Non-Assignment

This Contract and the rights and obligations of Customer hereunder shall not be assignable by Buyer, either by act of Customer or by operation of law without the prior written consent of Seller. Any purported assignment of this Contract without the prior consent of Seller shall be void.

12. Right to Offset / Withhold

The Customer may exercise a right of retention or offset only against uncontested or finally adjudged counterclaims.

13. Confidentiality

13.1 Tendered prices, documents concerning contractual negotiations, business and operating secrets and other information designated as confidential shall be treated confidentially. This also applies in the event that no contract between Vossloh and the customer comes into effect.

13.2 The contracting parties are aware that electronic and unencrypted communication is associated with security risks. The contracting parties waive the right to assert any claims substantiated by a lack of encryption unless encryption was explicitly agreed on in advance.

14. Compliance

14.1 The Customer and Vossloh agree to comply with all applicable laws and regulations. The Customer shall refrain from actions or omissions that, regardless of the form of participation, may lead to administrative fines or criminal prosecution. The Customer shall be obliged to take all steps necessary to avoid respective actions or omissions.

14.2 In the event of a breach of one of the aforementioned obligation, the Customer shall inform Vossloh without undue delay of a breach affecting the cooperation with Vossloh and immediately cease such actions. The Customer shall compensate Vossloh for any and all damage suffered by Vossloh due to such breach and / or Vossloh shall have the right to terminate in writing any contract for cause without notice. Vossloh shall have the right to demand indemnification from any third party claims or damages that have been caused by a breach of the aforementioned obligation by the Customer, its sub-contractors or their respective subcontractors.

14.3 Vossloh has a Code of Conduct applicable to all its legal entities and employees that can be downloaded from Vossloh's corporate website on the internet. Vossloh is not obliged to introduce its customers' compliance rules over and above this.

15. Final Provisions

- 15.1** This Contract shall be governed by and interpreted in accordance with the laws of the State of Texas which are in force on the date of this contract.
- 15.2** All actions or proceedings arising directly or indirectly or otherwise in connection with, out of, related to or from this Contract shall be brought only in Dallas County in the State of Texas or in the U.S. District Court for the Northern District of Texas, and Customer hereby consents and submits to the exclusive jurisdiction of such courts for the purpose of such actions or proceedings.
- 15.3** The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof, and this Contract shall be construed in all respects as if such invalid or unenforceable provision were omitted.
- 15.4** No delay or failure by either party to exercise any right under this contract, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless said waiver is supported by additional consideration and authorized in writing by the party so waiving.